



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Hart Enterprises Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-003804

Michigan Department of Treasury,
Respondent.

Presiding Judge
Peter M. Kopke

SUMMARY OF PREHEARING CONFERENCE

SCHEDULING ORDER

NOTICE OF VIDEO CONFERENCE HEARING

A Prehearing Conference on this matter was held on May 3, 2021. Gregory A. Nowak, Esq. appeared by telephone on behalf of Petitioner. Randi M. Merchant, Assistant Attorney General appeared by telephone on behalf of Respondent. A scheduling order has been established and a video conference hearing, via **Microsoft Teams**, has been set for:

HEARING DATE:	June 22, 2021
HEARING TIME:	9:00 a.m.
TEAMS HEARING LINK:	Microsoft Teams meeting Click here to join the meeting +1 248-509-0316,896678051# United States, Pontiac Phone Conference ID: 896 678 051#
PARTICIPANTS' GUIDE:	https://bit.ly/34fBXnN

This hearing is open to the public and this notice is provided under the Open Meetings Act. Any participant or member of the public wishing to attend this hearing **must** click on the "Teams Hearing Link" provided above to gain access to the hearing.

PREHEARING CONFERENCE SUMMARY

- I. SHOW CAUSE HEARING: N/A
 II. ASSESSMENT INFORMATION:

A. Type of tax, amount of tax, interest, and penalty for each assessment at issue, as assessed:

Assessment Number	Type of Tax	Tax	Interest	Penalties
VA4DA9T	Use	\$9,462.72	\$49.64	\$0.00
VA4DJ5P	Use	\$3,614.60	\$1,809.66	\$795.00
VA4DJ5Q	Use	\$8,419.20	\$1,556.22	\$749.00
VA4DJ5R	Use	\$9,669.06	\$1,332.21	\$849.00

B. The parties' contentions of the amount of tax, interest, and penalty for each assessment at issue:

Petitioner's Contentions:

Assessment Number	Type of Tax	Tax	Interest	Penalties
VA4DA9T	Use			
VA4DJ5P	Use			
VA4DJ5Q	Use			
VA4DJ5R	Use			

Respondent's Contentions:

Assessment Number	Type of Tax	Tax	Interest	Penalties
VA4DA9T	Use	\$9,462.72	\$49.64	\$0.00
VA4DJ5P	Use	\$3,614.60	\$1,809.66	\$795.00
VA4DJ5Q	Use	\$8,419.20	\$1,556.22	\$749.00
VA4DJ5R	Use	\$9,669.06	\$1,332.21	\$849.00

III. TAX INFORMATION: Respondent claims that the uncontested portion of the

This is an important legal document. Please have someone translate the document.

Este es un documento legal importante. Por favor, haga traducir este documento.

এটি একটি গুরুত্বপূর্ণ আইনি দলিল, অনুগ্রহ করে কেউ দলিলটিকে অনুবাদ করুন।

هذا هو وثيقة قانونية هامة يرجى لديك شخص تترجم الوثيقة.

Ito ay isang mahalagang legal na dokumento. Mangyari lamang na magkaroon ng isang tao isalin ang dokumento.

assessments at issue has not been paid.

IV. FACTUAL STATEMENT OF CLAIMS:

- A. The assessment's tax, interest, and penalties are at issue in this appeal.
- B. Petitioner's claims or counterclaims: See Petitioner's March 31, 2021 Prehearing Statement.
- C. Respondent's claims or counterclaims:
 - 1. "The petition indicates that Petitioner disputes the entirety of the assessed amounts; however, Treasury maintains that this claim is inaccurate because Petitioner has challenged less than half of the expense exceptions identified in the audit schedules and has not disputed the utilities determination. Because Petitioner failed to pay the uncontested portion of the assessments, the matter should be dismissed without an examination of the merits of Petitioner's claim."
 - 2. "Petitioner challenges Final Assessment Nos. VA4DA9T, VA4DJ5P, VA4DJ5Q, and VA4DJ5R, which Treasury issued after conducting a Michigan Use Tax Audit of Petitioner covering the period April 1, 2014 through December 31, 2017. Specifically, Petitioner disputes Treasury's determination that the property at issue is not eligible for the industrial processing exemption provided for in MCL 205.94o. For the industrial processing exemption to apply, a taxpayer must establish all of the following: (1) it is a qualified entity under Subsection 1; (2) the property is eligible under Subsection 4; and (3) that the property was actually used as part of an industrial processing activity as provided for in Subsection 7(a) and/or Subsection 3. Treasury submits that this burden has not been met because Petitioner has failed to establish that the property at issue here either qualifies as eligible under Subsection 4 or was actually used as part of a qualified industrial processing activity. Several of the items at issue were listed as exceptions because Petitioner was unable to supply the invoice related to the transaction. In addition, several of the items at issue would be clearly excluded from eligibility based on the plain language of the statute. Treasury contends that because Petitioner has failed to meet its burden to prove that the property at issue is exempt under the statute and the prima facie correct assessments must therefore be upheld. Consequently, Treasury maintains that its determination should not be adjusted, and that Petitioner is not entitled to the requested relief."

V. PENDING MOTIONS OR DISCOVERY:

- A. Motions: Respondent filed a Motion for Summary Disposition on April 12, 2021. Petitioner is filing a response to the Motion.
- B. Discovery: Discovery is closed unless otherwise stated below.

SCHEDULING ORDER

The parties and the Tribunal have determined the hearing in the above-captioned case shall be conducted as a video conference proceeding. Although video conference proceedings via *Microsoft Teams* are generally set up using email addresses, the Tribunal has provided a “Teams Hearing Link” that can be utilized by participants (i.e., attorneys or agents, witnesses, the court reporter, etc.) to “join” the hearing **and the parties or their attorneys or agents are required to provide that link to their participants** so that they can **timely** “join the hearing.”

The Tribunal has also provided a link to *MOAHR MTT Guide for Participants for the Conducting of Entire Tribunal Video Conference Hearings*. Participants **should review** the Guide **prior to the hearing**, as participants **are required to comply** with the requirements of the *Guide*, as said requirements will facilitate the conducting and transcription of the scheduled hearing. The **parties or their attorneys or agents** are also **required** to provide the link to the *MOAHR MTT Guide for Participants to their participants* so that they are **aware of and can comply with** those requirements.

- I. **June 8, 2021** is the final date for the parties to submit their exhibit lists **and** exhibits, with the exception of rebuttal exhibits, to the Tribunal by **e-filing or email** and the opposing party or parties by **email**. For the exhibit list, the parties **must use** the form prescribed by the Tribunal. The exhibit list and exhibits **shall be submitted** as provided in the **MOAHR MTT Guide for Participants**. An exhibit will **not** be admitted into evidence unless the exhibit is disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal. The exhibits may be submitted separately or in a single document **provided** that the single document or PDF is **bookmarked** so that each exhibit can be easily accessed.
- II. **June 8, 2021** is the final date for Petitioner to notify the Tribunal **by e-filing or email** of the name and telephone number of the court reporter retained by the parties to transcribe the hearing, as provided in the **MOAHR MTT Guide for Participants**.

IT IS SO ORDERED.

Failure to comply with this Order may result in the dismissal of the case or the conducting of a show cause or default hearing.¹

Entered: May 4, 2021
pmk

By



¹ See TTR 231(1) and (4). See also *Grimm v Dep't of Treasury*, 291 Mich App 140, 149-50; 810 NW2d 65 (2010) and MCL 205.732(c).

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Administrative Hearing Rules (R 792.10101-R 792.11289) and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy toward other parties, witnesses and administrative law judges, which includes attending the hearing on time, silencing cell phones, and dressing in appropriate clothing for in-person hearings.

REPRESENTATION: A party may be represented by an attorney or other authorized representative of the party's own choosing and at the party's own expense. The Michigan Office of Administrative Hearings and Rules does not recommend or appoint attorneys.

WITNESSES: Parties may present witnesses, if any, identified in the Prehearing Statements, to testify under oath or affirmation at the hearing, subject to cross-examination by the opposing party, and questions by the administrative law judge.

EXHIBITS: The parties shall submit exhibits pursuant to the Guide for Participants.

COURT REPORTER: The parties shall not only provide a court reporter to transcribe the hearing but shall also provide an electronic copy of the hearing transcript to the Tribunal by e-mailing it to taxtrib@michigan.gov. The costs attributable to the court reporter shall be shared equally by the parties. If the parties fail to pay the costs of the transcript to the court report prior to the submission of the transcript to the Tribunal, the court reporter may report this to the Tribunal with the submission of the transcript. As a result, the party or parties who failed to pay the costs associated with the transcript may be held in default.²

WITHDRAWAL: If Petitioner no longer wants to continue with the appeal, Petitioner may submit a written request to withdraw the case. Respondent must concur with the withdrawal. The request must be submitted to the Tribunal and served on Respondent at least 14 days before the hearing. Respondent may file a concurrence or objection to the request within 7 days of the service of the request on that party. If Respondent does not timely submit a concurrence or objection to the request will be deemed to be a concurrence to the request. If the request is granted, the case will be dismissed. If a request is not granted or the Tribunal has not notified you that it has been granted, you are required to attend the hearing.

SETTLEMENT: Parties may submit a written agreement settling a case (i.e., stipulation). The stipulation must be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form and be signed by the parties' attorneys or authorized representatives, if they have attorneys or authorized representatives, or by the parties, if they do not have attorneys or authorized representatives. There is a \$50 fee for the filing of the stipulation. If the stipulation with appropriate filing fee is received by the Tribunal or the parties email a copy of the signed stipulation to the Tribunal by 4:30 p.m. on the business day immediately preceding the day of the scheduled hearing, the hearing may be adjourned. Parties that email a copy of a signed stipulation to the Tribunal for purposes of adjourning a hearing are also required to submit the original signed stipulation with appropriate filing fee. The

² See TTR 321.

stipulation, once submitted, will be reviewed and, if accepted, the Tribunal will issue a consent judgment.

FAILURE TO APPEAR: The failure of a party to timely appear or otherwise participate in a hearing will result in adjournment of the hearing and the holding of that party in default. The defaulted party will be given an opportunity to show good cause for the failure to appear. Failure to respond or show good cause may result in dismissal of the case or the conducting of a default hearing.

REASONABLE ACCOMMODATION: All hearings are conducted in a barrier-free location in compliance with the Americans with Disabilities Act. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact the MOAHR by telephone at (517) 335-9760, or complete and submit an accommodation request form at https://www.michigan.gov/documents/lara/Disability_Accommodation_FORM_v1_2_464017_7.doc within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

Hearing participants and observing members of the public who need assistance with speech or hearing may also participate in a telephonic or virtual hearing by dialing 7-1-1 and using the Michigan Relay service. More information about this service may be found at https://www.michigan.gov/mpsc/0,9535,7-395-93308_93325_93425_94040_94041---,00.html.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the Tribunal and other parties and their attorneys or representatives. The MOAHR will use the private information solely for purposes related to the hearings process. A party may file a motion to request that a public hearing be closed in part or file a motion for protective order to deem certain information private and confidential in order to afford that information special protection.

CONTACT INFORMATION:

Michigan Tax Tribunal

Mailing Address: P.O. Box 30232, Lansing, MI 48909

Phone: (517) 335-9760

E-Mail: taxtrib@michigan.gov

Website: www.michigan.gov/taxtrib

E-Filing: <https://eFiling.apps.lara.state.mi.us>

Office Hours: 8:00 a.m. – 5:00 p.m., our office is closed from 12:00 p.m. – 1:00 p.m.